

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
) Criminal Action
v.) No. 18-10307-MLW
)
DAREN DeJONG,)
)
Defendant.)
)

* * * * * E X C E R P T * * * * *

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BEFORE THE HONORABLE MARK L. WOLF
UNITED STATES DISTRICT JUDGE

SENTENCING

May 2, 2019

John J. Moakley United States Courthouse
Courtroom No. 10
One Courthouse Way
Boston, Massachusetts 02210

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Official Court Reporter
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P R O C E E D I N G S

2 | (Case called to order.)

3 THE COURT: Good morning. Would counsel please
4 identify themselves for the court and for the record.

5 MR. GRADY: Good morning, Your Honor. Mark Grady on
6 behalf of the United States. With me is Assistant United
7 States Attorney Dustin Chao.

8 MR. BAILEY: Good morning, Your Honor. Brad Bailey
9 for Daren DeJong, who is seated at counsel table to my right.

10 MR. LANZA: Good morning, Your Honor. Adamo Lanza on
11 behalf of Daren DeJong.

12 THE COURT: Thank you. I apologize for starting a
13 little late, but there were some things I wanted to look at
14 more closely.

15 Mr. Grady, in the Presentence Report the Massachusetts
16 State Police is identified as the victim of the fraud in this
17 case. Has the government notified the State Police of its
18 right to submit a letter and/or to be heard today?

19 MR. GRADY: Yes, Your Honor. The government has been
20 in communication with the counsel's office for the State Police
21 throughout the proceedings, and a representative of the State
22 Police, Detective Lieutenant Anna Brooks of the State Police
23 Internal Affairs department, is present today, but I do not
24 expect her to speak.

25 THE COURT: Well, if Ms. Brooks would like to be

1 heard, after the guideline range is calculated or perhaps in
2 this case tentatively calculated, I'll offer her an opportunity
3 to speak. Well, actually, where is she?

4 MS. BROOKS: Good morning, Your Honor.

5 THE COURT: Good morning. Do you wish to be heard in
6 this proceeding about the impact on these proceedings -- the
7 impact of this case on the Massachusetts State Police?

8 MS. BROOKS: No, Your Honor.

9 THE COURT: All right. In connection with the
10 sentencing, I have the Presentence Report with the parties'
11 objection to the guideline calculation, the government's
12 sentencing memo, the defendant's sentencing memo, about a dozen
13 letters on behalf of the defendant, the release status letter.
14 I've looked at the indictment and the plea agreement again as
15 well as the transcript of the change of plea colloquy.

16 Is there anything else I should have received and
17 read?

18 MR. GRADY: Nothing, Your Honor, except what the
19 government provided to Probation in response to the court's
20 order.

21 THE COURT: Yes. And actually, I have that
22 information but haven't delved into it.

23 MR. BAILEY: I believe you have everything from the
24 defense, Your Honor.

25 THE COURT: Mr. Grady, let me ask you this. In your

1 sentencing memo on page 7, this is docket number 46, you wrote,
2 "In 2016 DeJong collected over \$16,000 for overtime shifts and
3 hours that he did not work."

4 MR. GRADY: I apologize, Your Honor. That transposed
5 the 2015 figure for the 2016 figure. It should be the \$14,000.

6 THE COURT: Okay. So that essentially --

7 MR. GRADY: Just a typo between the two years, Your
8 Honor. I apologize to the court.

9 THE COURT: That's what I thought but I wasn't sure.
10 All right. Now, on April 29, essentially with the agreement of
11 the defendant, I unsealed the sentencing memorandum that had
12 been filed under seal with the redacted version for the public
13 record. The most substantial information in the now unredacted
14 sentencing memo relates to Mr. DeJong's proffer to the Attorney
15 General's Office. The information he provided to assist in its
16 investigation, continuing investigation, as I understand it, of
17 Troop E of the Massachusetts State Police.

18 I redacted information that appeared to me would
19 identify people who have not been indicted that the defendant
20 discussed because, as I said, I didn't anticipate that they
21 would have an opportunity to contest his statements in this
22 proceeding, although it's conceivable they might.

23 But anyway, I also said I would consider de novo,
24 fresh, any motion to unseal the limited information that
25 remains redacted. I haven't received any motion or request to

1 unseal that, but I'll continue to consider whether redactions
2 that I allowed to remain in or proposed are justified. It
3 depends, perhaps on the evolution of this hearing.

4 As always I'd like to try to assure that we have a
5 clear and common sense of the legal framework for sentencing.
6 It is as was succinctly stated by the Supreme Court in Gall in
7 2007. I have to begin by correctly calculating the guideline
8 range. The correctly calculated guideline range is the
9 starting point for determining the sentence. However, I may
10 not presume that that range is reasonable. Rather I have to
11 listen to the arguments of the parties and anything that
12 Mr. DeJong may say, I have to consider all of the section
13 3553(a) sentencing factors and decide what sentence is
14 sufficient and no more than necessary to serve the statutory
15 purposes of sentencing. If there's a departure or a variance,
16 a substantial departure or variance requires a more significant
17 justification than a minor one. And in any event, I have to
18 explain the reasons for my sentence.

19 Do the parties agree that that's the legal framework?

20 MR. GRADY: Certainly no objection to that framework,
21 Your Honor.

22 MR. BAILEY: The defense agrees that's the legal
23 framework. And for clarity, Mr. Lanza will handle the
24 calculations piece. However, to the extent that this court may
25 ask more about the underlying negotiations that got us to the

1 offense level in the plea agreement, I will be ready to address
2 that if this court has questions because I directly
3 participated in those discussions.

4 THE COURT: Okay. And that is permissible. All
5 right. And we're operating under the manual with the
6 guidelines now in effect, that is, with the amendments
7 effective November 1, 2018.

8 Mr. Bailey, have you and Mr. DeJong each read the
9 Presentence Report?

10 MR. BAILEY: We have, Your Honor, and Mr. DeJong has a
11 copy of it in front of him now for reference.

12 THE COURT: Okay. And except for the matter to which
13 you made objection relating to the amount of the loss, is there
14 anything in there that you or he thinks is inaccurate?

15 MR. BAILEY: No, Your Honor.

16 THE COURT: And Mr. DeJong, did you read the
17 Presentence Report?

18 THE DEFENDANT: Yes, I did, Your Honor.

19 THE COURT: And other than the amount of the loss, is
20 there anything in there that you think is not correct?

21 THE DEFENDANT: No, sir.

22 THE COURT: Okay. You may be seated.

23 All right. So let's go to the Presentence Report.
24 Both the government and the defendant object to the amount of
25 the loss as it's calculated in the Presentence Report. To put

1 this in perspective, in their plea agreement the parties agreed
2 that the amount of the loss concerning the fraud, the scheme to
3 which Mr. DeJong pled guilty, was more than \$6,500 and less
4 than \$15,000, which adds two levels to the calculation of the
5 sentencing guidelines. The Presentence Report finds that the
6 amount of the loss is in the 15 to \$40,000 range because it
7 includes loss in 2015. The indictment in this case charges a
8 scheme that began January 1, 2016 and went to December 31,
9 2016, but Probation's calculation includes more than \$15,000 as
10 I recall for 2015 and more than \$1,000 for 2017.

11 As the parties recognize, the guidelines must be
12 calculated based on the amount of the loss regarding the count
13 of conviction and any relevant conduct. Relevant conduct under
14 section 1B1.3(a) (2) includes conduct that is part of the same
15 course of conduct or common scheme.

16 At the January 28, 2019 guilty plea hearing, I
17 questioned whether the scheme really began -- well, whether the
18 scheme began on January 2016 as charged in the indictment or
19 whether it had begun earlier. The government told me that it
20 had calculated the loss only for 2016 and in the plea agreement
21 agreed not to calculate the loss for 2015. I was also told I
22 believe that the Massachusetts State Police had destroyed
23 records for years prior to 2015.

24 The defendant's sentencing memorandum amplifies that
25 the defendant negotiated for limiting the loss for guideline

1 calculations purposes to 2016 in the plea agreement. But the
2 parties recognize and continue to recognize that the government
3 had and has an obligation to give Probation and the court all
4 the information necessary to calculate the guidelines properly,
5 which is what the Supreme Court in Gall says has to be the
6 starting point of any sentencing. So I ordered, after the
7 January 28 guilty plea, the government to provide the evidence
8 necessary for Probation and ultimately me to properly calculate
9 the amount of the loss and the guideline range.

10 The government provided evidence or information
11 concerning 2015 and 2017. It totals, the amount of the loss
12 for those years totals an additional \$16,000, roughly, raising
13 the amount of the loss Probation used in the Presentence Report
14 to about \$31,000 and adding four levels to the -- four more
15 levels to the guideline calculation -- well, four levels to the
16 base offense level and two more levels than Probation has --
17 than the parties had this in their plea agreement. So
18 Probation calculates the guideline range to be a total offense
19 level of 12, with a Criminal History Category of 1, guideline
20 range of 10 to 16 months in prison, and that's a Zone C
21 sentence, which the guidelines indicate or advise at least half
22 of which should be served in custody. The parties' plea
23 agreement calculates the guideline range as a 10-1. The
24 guideline is a 10-1, with a 6- to 12-month sentencing range,
25 and that's in Zone B.

1 Have I summarized that accurately?

2 MR. GRADY: Your Honor, the government does not agree
3 that they agreed to withhold information from the court in the
4 plea agreement. The plea agreement expressly states that there
5 is -- the government -- nothing in the plea agreement limits
6 the government's obligation to provide information.

7 THE COURT: No. In fact, you told me that same thing
8 at the Rule 11 hearing, and I don't understand the defendant to
9 be claiming that you had an obligation to withhold information
10 from the court.

11 MR. GRADY: The court had said something along those
12 lines. To the extent I misunderstood what the court to say, I
13 apologize. But I thought I heard the court say the government
14 agreed to withhold information and that's not the case.

15 THE COURT: My understanding now, and it's been
16 amplified by reading the defendant's sentencing memo, is that
17 the government hadn't analyzed the records for 2015 and
18 Mr. Bailey says in the plea agreement had agreed not to but
19 that you also recognize your obligation to share information
20 with the court, something to that effect.

21 MR. BAILEY: Yes. Your Honor, what the negotiations
22 resulted in was the government had indicated that they were
23 planning a possible superseding indictment to include 2015
24 where they were prepared to do a very deep dive in terms of the
25 numbers there. And we had a number of back and forths within a

1 timeframe, and the defense lawyer protectionism in me kicked in
2 and said, Will you put it in writing that you're not going to
3 do anything with 2015 in terms of the sentencing, and the
4 government very correctly said, We can't promise what we don't
5 know. In order to do that we have to dig into 2015. If we dig
6 into 2015, we have to turn that over as relevant conduct. If
7 you agree to this as structured now in this plea agreement, we
8 will stop and we'll move on.

9 I think that's a fair and accurate assessment of the
10 context in which this agreement was reached.

11 MR. GRADY: I would only clarify very, very briefly,
12 Your Honor. The proposed agreement was to forgo additional
13 charges. At that point, and I think the statements in the
14 defendant's sentencing memo reflect this, the government did
15 not know whether there was relevant conduct for 2015 and did
16 not yet have the records actually at that point when the plea
17 was being negotiated.

18 At no point did the government suggest it would not
19 provide relevant conduct to the court if it determined that
20 that existed. It would stop its investigation in terms of
21 bringing additional charges for 2015, but the government never
22 promised to withhold information from the court that was
23 properly required to be disclosed as relevant conduct. And in
24 fact, the court has that now and the defendant is not claiming
25 that the government breached any promise.

1 MR. BAILEY: The government didn't breach any promise,
2 and I don't think we're too far apart, but I can tell you what
3 I represented to the court was the way the final conversation
4 went that led to our client agreeing to the plea agreement.

5 THE COURT: Two things. One, this brings into sharp
6 focus something that I began to get at in January. Section
7 6B1.2 of the guidelines says that in the case of a plea
8 agreement that involves an agreement not to pursue potential
9 charges, the court has an obligation to determine for reasons
10 stated on the record that the remaining charges adequately
11 reflect the seriousness of the actual offense behavior and that
12 accepting the agreement will not undermine the mandatory
13 statutory purposes of sentencing or the sentencing guidelines.
14 I didn't know about -- I asked about relevant conduct in
15 January, but I didn't know about it. I really haven't yet made
16 that determination, and it's something you should be prepared
17 to address.

18 With regard to the potential superseding indictment,
19 was there any discussion about the possibility of bringing
20 conspiracy charges or just adding 2015?

21 MR. BAILEY: I think it related to adding 2015, Your
22 Honor, and how that might affect the calculations.

23 THE COURT: All right. Well, with regard to the way
24 this has been structured, I mean, I asked the question in
25 January because I think -- well, I did articulate some of this.

1 The indictment alleges the scheme began on New Year's Day and
2 ended on New Year's Eve in 2016, which seemed somewhat
3 artificial or arbitrary. And I noted that at least in one
4 other case, and now I know in three or four other cases, other
5 members of Troop E have been charged with committing the same
6 form of fraud in 2015 and 2016.

7 This is not -- I mean, this is a matter of concern to
8 my colleagues as well as to me and it's not idiosyncratic to
9 the District of Massachusetts. Section 6B1.4 of the guidelines
10 in the commentary states it is not appropriate for the parties
11 to stipulate to misleading or nonexistent facts even when both
12 parties are willing to assume the existence of such, quote,
13 facts, for purposes of the litigation. Rather the parties
14 should fully disclose the actual facts and then explain to the
15 court the reasons why the disposition of the case should differ
16 from that which such facts ordinarily would require under the
17 guidelines. So it seems to me that that principle is
18 implicated here.

19 Mr. Grady, let me ask you this. On May 10, 2017, then
20 Attorney General Sessions issued a memorandum for all federal
21 prosecutors. The subject was Department Charging and
22 Sentencing Policy. Is that still in effect?

23 MR. GRADY: Yes, Your Honor.

24 THE COURT: Because again, it seems to me -- well, the
25 memorandum says in part prosecutors must disclose to the

1 sentencing court all facts that impact the sentencing
2 guidelines or mandatory minimums and should in all cases seek a
3 reasonable sentence under the factors in 18 United States Code
4 Section 3553. In most cases recommending a sentence within the
5 advisory guideline range would be appropriate. Recommendations
6 for sentencing departures or variances require a supervisory
7 approval and the reasoning must be documented in the file.

8 I mean, it seems to me that it's the department policy
9 to follow the guidelines, give judges the relevant information,
10 including concerning relevant conduct, if there's a decision to
11 forgo a charge that could have been brought, potential charge,
12 and then to argue what you think the right sentence is. And
13 then, I mean, this has some particular relevance, when I think
14 eight people have been charged in this court, troopers or
15 Massachusetts State Police employees have been charged and the
16 argument is, well, Judge Stearns, you know, didn't send Chin
17 away. He gave him a day. But Chin was just indicted for 2016.
18 Did the government look to see if there was relevant conduct
19 regarding Chin and tell Judge Stearns about it?

20 MR. GRADY: There was no ability to calculate 2015
21 conduct for Officer Chin.

22 THE COURT: Why?

23 MR. GRADY: The evidence wasn't available. It simply
24 didn't exist.

25 MR. CHAO: I can answer this question. Your Honor, I

1 handled the Chin prosecution. These cases, although they're
2 charged in a group of eight troopers, as Your Honor is aware
3 since you've looked at the cases, they're apples and oranges.
4 Every trooper found different ways in which to defraud the
5 State Police. There was no --

6 THE COURT: Well, actually, I didn't look at them that
7 closely.

8 MR. CHAO: Just to inform the court, there was no
9 similarity with the way that fake tickets were actually
10 submitted to the State Police.

11 THE COURT: Wait a minute. Apples and oranges? Did
12 they all misrepresent how many hours they worked?

13 MR. CHAO: Your Honor, the government believes --

14 THE COURT: May I finish the question? May I finish
15 the question? Did they all misrepresent how many overtime
16 hours they worked?

17 MR. CHAO: My statement, Your Honor, was that they had
18 chosen different ways to submit fraudulent tickets and that
19 some of the ways that they submitted fraudulent tickets were --

20 THE COURT: Could you answer my question? And then
21 you can go on. Did they all misrepresent the number of hours
22 they worked overtime?

23 MR. CHAO: Yes.

24 THE COURT: And did they submit fraudulent citations
25 as part of that?

1 MR. CHAO: Yes. Getting back to Chin. Chin, we were
2 unable to place in a specific cruiser. So the data was not the
3 same for each trooper in this case. So there were some that we
4 were able to place in cruisers, and that was significant, as
5 the court knows, because a lot of the information that was
6 gathered in the prosecution's case depended heavily upon the
7 transponder and the GPS information for each trooper and radio
8 information. So with respect to Officer Chin, we could not
9 place him in a cruiser for the period of 2015.

10 THE COURT: Did he submit -- did you look at the
11 citations for 2015?

12 MR. CHAO: Yes, we did. We did request the citations
13 for Officer Chin. We did a review of the 2016 citations. The
14 review showed that what we place, as reflected in the
15 complaint, that we charged him with those fraudulent tickets
16 that he submitted in October of 2016.

17 THE COURT: In October?

18 MR. CHAO: October of 2016, correct.

19 THE COURT: And was there a pattern that emerged? I
20 mean, I can't really get too deeply into these other cases.
21 But particularly in light of the -- I mean, am I right that
22 part of the scheme involved -- I mean, they worked some hours,
23 they just didn't work full shifts on occasion and they'd be
24 backed up by other people working those shifts if they made a
25 stop sometimes?

1 MR. GRADY: The core of the government's charges, Your
2 Honor, was a 666 conspiracy, which at a core was based upon
3 each officer submitting fraudulent tickets claiming to have
4 worked hours they did not.

5 THE COURT: Here. You just said a 666 conspiracy.

6 MR. GRADY: Excuse me. 666 embezzlement charge. I
7 apologize. I guess the court has put that word in my mind.
8 It's a 666 embezzlement charge based upon the submission of
9 fraudulent tickets claiming to be somewhere they were not.

10 To return to what AUSA Chao said with respect to the
11 methodologies, there was not a pattern. I think the court is
12 now asking was there a pattern between the various ways it was
13 committed. This defendant, for instance, created bogus
14 citations during his regular shift and changed the times to
15 make it look like he was working an AIRE shift that followed
16 his regular shift. In other cases, in the case of Gary Herman,
17 we had an individual who reused old tickets. He simply took
18 old tickets that he issued in for instance April of 2016 and
19 said he issued them in June during AIRE shifts that he didn't
20 work. He did that repetitively.

21 Other individuals, Greg Raftery on instances ran
22 plates in the morning of cars that simply drove by. He used
23 the information to create bogus citations, and instead of
24 saying that they were issued at 8:00 a.m. he said they were
25 issued at 8:00 p.m. during AIRE shifts he was supposed to be

1 working that he didn't work.

2 And what AUSA Chao was saying to this court was that
3 all of the defendants seemed to have different ways of going
4 about carrying out creating these false tickets and carrying
5 out this scheme for their individual cases.

6 THE COURT: We may, I think will, come back to this
7 but it's not immediate. I'm just emphasizing that the
8 guidelines under the directions of the Attorney General, which
9 are internal to the executive branch, require disclosing the
10 information to courts, the information necessary to properly
11 calculate the guideline range, which is only a starting point,
12 and ultimately the issue is what sentence is sufficient and no
13 more than necessary.

14 MR. BAILEY: Your Honor, if I may, just somewhat
15 apropos of that, using a little bit of my background and
16 experience. I think this court is probably aware there has
17 been somewhat of a change in this office's and other offices'
18 approaches to criminal targets. It is very common for me to be
19 contacted pre-charge by the U.S. Attorney's Office saying, you
20 know, we have your client, come in now and agree to these
21 charges. We can have an information. We won't even complete
22 the grand jury. That never happened or rarely happened years
23 ago. That happened in this case.

24 I was contacted as early as August. Plead to 2016,
25 Zone B, 6 to 12 months. Same thing came after the indictment.

1 And these are plea negotiations, plea discussions. I
2 understand that and I'm --

3 THE COURT: Go ahead.

4 MR. BAILEY: I understand that and I know that's out
5 there, but this is how the system is predicated these days.

6 THE COURT: I'm sorry. Say that again.

7 MR. BAILEY: This is how the system of case resolution
8 is predicated these days. We know about relevant conduct.
9 We're all aware of that.

10 THE COURT: Yeah, you are. And I didn't get the sense
11 that either of you were surprised when I asked the question in
12 January. I mean, you anticipated I might, correct?

13 MR. BAILEY: When you raised it, it did not surprise
14 me that you raised it.

15 THE COURT: But I mean, here is the point. In 1987 we
16 went to the sentencing guidelines, which were intended to do
17 two things: promote truth in sentencing and diminish
18 unwarranted disparity to make sure that people who were
19 similarly situated -- to maximize the likelihood that people
20 similarly situated would be treated similarly. So it's kind of
21 a modified real offense system. And this is why relevant
22 conduct is -- the fact that certain charges aren't brought is
23 not supposed to affect the calculation of the guideline range
24 or ultimately the sentence. And that actually wasn't novel --
25 this is getting really into history. It wasn't novel in 1987.

1 Uncharged conduct could be taken into account at sentencing
2 before the guidelines.

3 But, you know, I appreciate your candor, and you're
4 both being careful to educate me because I do have concerns
5 today as you were in January. But, you know, judges have an
6 obligation to make the guidelines work the way they're intended
7 to work and to remind you if there's occasion, and today is an
8 occasion of, among other things -- well, the relevant conduct
9 provisions and 6B1.4, which says it's not appropriate for the
10 parties to stipulate to misleading or nonexistent facts. This
11 is a corollary of that.

12 And, you know, it's very important in diminishing
13 unwarranted disparity. I mean, one of the concerns here --
14 well, the Sessions memo also says, "First, it is the core
15 principles that prosecutors should charge and pursue the most
16 serious, readily provable offense. This policy affirms our
17 responsibility to enforce the law as moral and just and
18 produces consistency. This policy fully utilizes the tools
19 Congress has given us. By definition, the most serious
20 offenses are those that carry the most substantial guideline
21 sentence, including mandatory minimum sentences. There will be
22 circumstances in which good judgment would lead a prosecutor to
23 conclude that a strict application of the above-charging policy
24 is not warranted. In that case, prosecutors should carefully
25 consider whether an exception may be justified. Consistent

1 with longstanding Department of Justice policy, any decision to
2 vary from the policy must be approved by the United States
3 Attorney or a supervisor designated by the U.S. Attorney, and
4 the reasons must be documented in the file."

5 There are many cases in which it's not appropriate, I
6 would think, to approve -- you know, to bring the most serious
7 charge. I think it is important to exercise judgment. But it
8 creates the risk of unjustified disparity. In some cases, you
9 know, the U.S. Attorney says, Well, you know, we're required to
10 bring the most serious charge. In other cases they don't give
11 the judge the information that even would alert the judge and
12 the public to the fact that there are charges that could have
13 been brought and weren't brought.

14 But the guidelines, as I said, in section 6 also, if
15 there are charges that are forgone, the word that was used
16 today, that 2015 was forgone, I'm supposed to -- I'm required
17 to decide whether that's appropriate when I accept the plea.
18 But if I don't have the information and my colleagues don't
19 have the information, we can't do what we're obliged to do
20 under the guidelines.

21 Let's go to the objection, though. And the objection
22 is on page 24. The parties each have the same objection. The
23 government objects to the PSR's defense level calculation
24 because it is bound by the plea agreement to calculate the
25 guidelines in accordance with section 3 of the plea agreement

1 at page 2, which says two levels are added under section
2 2B.1.1(b) because the loss involved more than \$6,500 but less
3 than \$15,000. And the government is bound by its plea
4 agreement, and I'm not encouraging it to advocate anything it
5 didn't agree to, anything that's inconsistent with the plea
6 agreement.

7 It may be that I should hear first from the defendant
8 and then if the government wants to supplement it, okay?
9 Because the defendant has the same objection. Go ahead.

10 MR. LANZA: We have a slightly different objection,
11 one that we're not pressing here today, relative to the way in
12 which that precise number was derived by the government.

13 THE COURT: When you say you have an objection and
14 you're not pressing it today, the objection is the one that's
15 written in the Presentence Report. Do you have an objection in
16 addition to that, or do you want me to decide the written
17 objection?

18 MR. LANZA: I apologize, Your Honor. The defendant's
19 objection I think is differently stated than the government's
20 objection, which is on page 24. Ours is on page 25. And we
21 just raised a concern about how that exact number was
22 calculated, but it's not something that we wish to press here
23 today.

24 THE COURT: Well, you don't press it because it's
25 abandoned in the sentencing memo. I don't know which of you

1 wrote the sentencing memo. But it's necessary to make a
2 reasonable estimate, not a precise estimate, and common -- I
3 asked the question about 2015 in January because I knew that
4 other troopers had been accused of engaging in the scheme in
5 2015 and I wondered whether Mr. DeJong really started his
6 scheme on New Year's Day and ended it on New Year's Eve. And
7 the sentencing memo says you need a reasonable estimate.

8 MR. BAILEY: Judge, I'll accept the blame for the
9 confusion here. Yes, we are not -- that second piece of this
10 which we raised just as a point of information is not being
11 pursued here. We agree with the government's objection as set
12 forth on page 24 in terms of the --

13 THE COURT: The issue is why isn't 2015 relevant
14 conduct or 2017 as well?

15 MR. BAILEY: Since you've asked the defense, again
16 you've set forth the law, you've set forth the Attorney
17 General's memorandum, and I'm simply setting forth legal
18 practice, practical legal practice.

19 THE COURT: Okay. I mean, that comes up at a
20 different place in the process. I have to start by correctly
21 calculating the guideline range and then decide what's
22 sufficient and no more than necessary, and I think the
23 government's going to advocate a six-month sentence, which
24 happens to be a downward departure or variance. But I have to
25 correctly calculate the guideline range even if I am not to

1 presume that it's reasonable.

2 MR. BAILEY: I understand. And I guess I'm just
3 digging in my heels not just for this case but for posterity in
4 terms of, I think if the parties have come to an agreement,
5 that is what should control, so I'm just putting that on the
6 record.

7 THE COURT: That's an argument to be considered.
8 Well, my tentative view is that I should deny the objection
9 because 2015 is part of the common scheme and plan. To the
10 extent that there's money in 2017, it's also part of the same
11 common fraudulent scheme or plan. And the amounts involved, if
12 they were only \$2,000, would bump it up to the next level.
13 Does the government want to be heard on that, though?

14 MR. GRADY: With respect to the objection, we have
15 nothing to add.

16 THE COURT: Okay. Thank you.

17 MR. BAILEY: And just note our continued objection on
18 that, please.

19 THE COURT: Yes. So I'm denying the government's
20 objection 1 and the defendant's.

21 Let's see, objection 2 is resolved. The defendant's
22 objection 2 is resolved. It is also denied.

23 And objection 3 resulted in a correction.

24 MR. LANZA: It doesn't affect the guidelines, though,
25 Your Honor.

1 THE COURT: Well, they made the correction.

2 MR. LANZA: Yes.

3 THE COURT: It's not an enduring objection.

4 MR. LANZA: Correct, Your Honor. I just noted it's
5 not one that has any impact on the guidelines.

6 THE COURT: All right. Before I calculate the
7 guidelines, though, I have another question. Actually, I have
8 one more question regarding the objections for the government.
9 I might as well raise it here.

10 In the government's objection, it said that in making
11 the loss estimates for 2015 and 2017 the government relied on
12 records and datasets that are less comprehensive than those
13 that were used to calculate the loss for 2016. "By way of
14 example, the government does not possess AIRE activity cards
15 for the year 2015 or 2017," and then there's another sentence.
16 Why does the government not have those records for 2015 and
17 2017?

18 MR. GRADY: For 2015 the State Police informed us that
19 they didn't exist, so it was simply they didn't have the
20 records.

21 THE COURT: They didn't exist?

22 MR. GRADY: They didn't have them. I'm sorry.

23 THE COURT: Did they exist at one time?

24 MR. GRADY: My understanding is that they certainly
25 had to have existed in 2015, but the State Police were unable

1 to produce them to us when we requested them in this
2 investigation for the 2015 AIRE cards.

3 THE COURT: The State Police were unable to produce
4 the records for 2015 when you sought them in -- when did you
5 ask for them?

6 MR. GRADY: '18.

7 THE COURT: Because, I mean, this relates to something
8 else that's in the Presentence Report. I thought there were
9 no -- did you ask for records before 2015?

10 MR. GRADY: Yes, but the response received was that
11 the overwhelming majority of records from prior to January 2015
12 had been destroyed during their regular record retention
13 process.

14 THE COURT: They were destroyed as part of the regular
15 record retention?

16 MR. GRADY: Their regular process, yes. They had a
17 three-year window is what we were informed.

18 THE COURT: And your request was in 2018?

19 MR. GRADY: Yes, Your Honor.

20 THE COURT: Okay. What about the 2017 records? Why
21 didn't you get those in 2018?

22 MR. GRADY: With respect to the 2017 records, we were
23 talking about one month of the year where this program existed.
24 The government focused its efforts on obtaining the very large
25 amount of data that applied to the two full years during which

1 the defendants had the opportunity to take advantage of these
2 programs.

3 The government did obtain a significant portion of the
4 2017 records, but ultimately, once the plea negotiations
5 reached the point in October of 2018 where a plea had been
6 agreed, the government did not go out and fully complete its
7 efforts to get those final records for the one month in 2017.
8 The government certainly had enough to provide the court with a
9 relevant conduct statement with respect to '15 and '17 that is
10 fully complete and reflects all of the information the
11 government has.

12 THE COURT: And I think in the Presentence Report
13 there's an indication that the scheme -- well, it's in
14 paragraph 9. "Beginning at least by January 2015, Troop E
15 troopers could earn overtime pay by signing up for and working
16 selective traffic enforcement initiatives, including the AIRE
17 and X-Team programs."

18 Did these programs begin before January 2015?

19 MR. GRADY: Yes, Your Honor.

20 THE COURT: So do you know when they began?

21 MR. GRADY: The government doesn't have a definitive
22 record that it obtained that states when it started. However,
23 having spoken to a number of officers, these certainly have
24 been around for more than a decade.

25 THE COURT: For more than a decade?

1 MR. GRADY: Yes, Your Honor.

2 THE COURT: So it's possible the fraud goes back a
3 decade.

4 MR. GRADY: It is possible. The government is unable
5 to prove it. And if the government had sufficient evidence to
6 prove by a preponderance that any defendant had engaged in that
7 behavior prior to the dates you had, so if the government had
8 information prior to 2015 to provide to this court, it would
9 have been provided. It does not have that.

10 THE COURT: But this goes to something else you're
11 going to hear about, and this is part of the reason -- I mean,
12 I stated the principles that apply about judicial -- you know,
13 information provided to a judge almost always has to be public,
14 but we couldn't have conducted the sentencing hearing
15 otherwise. I know he didn't make his proffer to the Attorney
16 General until April 9, less than a month ago, 2019. But
17 Mr. DeJong wants to tell you about the history of this program,
18 among other things, according to Mr. Bailey at least. But
19 we'll get to that.

20 Because here -- I now have another concern, and it's
21 just been magnified somewhat. But even putting aside whether,
22 you know, there's a way to go back before 2015 -- and at some
23 point I understand, you know, the record is complete and
24 decisions are made based on the information that's then
25 available, but I'm concerned that the guideline calculation may

1 still be too low. Section 1B1.3(a)(1)(b), the relevant conduct
2 provision, requires, "including the amount of loss resulting
3 from jointly undertaken criminal activity, whether or not
4 charged as a conspiracy, that's reasonably foreseeable to the
5 defendant."

6 So I asked you about this on January 28. And I asked
7 -- this is page 28. "So there's no claim that Mr. DeJong is
8 responsible for the losses caused by the people he worked
9 with?" And you answered me, "There's no charged claim. I
10 don't want to speak to what the court might infer from all the
11 evidence without having provided it to the court. I don't want
12 to decide for you." And there is no conspiracy charge. But if
13 conspiracy existed, it would constitute relevant conduct.

14 And now I know, having read the Presentence Report, it
15 appears from the Presentence Report -- and I think Mr. Chao
16 maybe was beginning to get at this, it now appears from the
17 Presentence Report that this case may involve an uncharged
18 conspiracy or RICO conspiracy, a racketeering enterprise
19 between members of Troop E. You know, people in the same unit,
20 something that -- it's an organization, it has a structure,
21 engaging in the same type of illegal conduct in the AIRE and X
22 shift programs, filing false claims concerning hours worked and
23 citations written.

24 They may have falsified the citations in different
25 ways, but there seems to be, from the Presentence Report alone,

1 a kind of interdependence between the troopers, that they were
2 backing each other up when traffic stops were made, apparently,
3 reportedly, and any one of them could have blown the whistle on
4 this.

5 So it appears that there's strong circumstantial
6 evidence of a conspiracy or a RICO conspiracy. And then the
7 defendants proffer. And I don't know the terms of the proffer,
8 or whether this could be used against him. But, you know,
9 that's an issue that could be dealt with in a transparent way
10 if it was presented. But his proffer as described in the
11 sentencing memo provides powerful evidence of a conventional
12 conspiracy or RICO conspiracy.

13 He talks, among other things, about at least four
14 people who have not yet been indicted to my knowledge. Just by
15 way of example, the sentencing memo on page 10 says, you know,
16 one person told him, Mr. DeJong, "We've all agreed not to write
17 tickets today. It would be best if we were all on the same
18 page."

19 I just calculated the amount of restitution in the
20 judgments or the plea agreements, which would be low because
21 they only involved a count of conviction, not relevant conduct,
22 but for the seven other federal defendants, the seven others,
23 the amount of restitution in the plea agreements or the
24 judgments totals \$131,631. If that was added to the amount of
25 the loss attributed to Mr. DeJong, which is I think \$31,631,

1 that takes you to a loss of \$162,736. And that would mean the
2 guidelines were a 16-1 and the guideline range would be 21 to
3 27 months.

4 I don't think I can use today, if I complete this
5 hearing, a 20- to 27-month starting point because I didn't give
6 you prior notice of this, but I didn't begin to figure this out
7 until yesterday afternoon.

8 But why shouldn't I be considering whether there's
9 relevant conduct in the form of an uncharged conspiracy here?

10 MR. GRADY: I think I want to clarify the court's
11 question. Is the court saying this based on the relevant
12 conduct that was available to the government or based upon the
13 defendant's admissions that he's made in his sentencing memo?

14 THE COURT: No. I'm saying that based on what was
15 available to the government, what I got from the Presentence
16 Report and then it's reinforced and magnified by the
17 information concerning his proffer.

18 MR. GRADY: With respect to this defendant, the
19 government was constrained by the evidence it had with respect
20 to this defendant. The particular AIRE shifts that -- now, to
21 be clear, there was an egregious lack of oversight.

22 THE COURT: Oversight by who?

23 MR. GRADY: By the lieutenants, by the people in
24 charge of this AIRE program. And I'll explain what I mean in
25 the context of this explanation if the court will give me the

1 opportunity.

2 THE COURT: I will.

3 MR. GRADY: The core of the charges the government
4 pursued against this defendant was that he embezzled money by
5 way of fake tickets, and that was the core of the charges. It
6 was the core of the proof, that he knew he was doing wrong
7 because no one would lie and create a fake ticket if what they
8 thought they were doing was right or okay or accepted. And
9 that was the core of the charges for '16, that's the core of
10 the charges for the '15 relevant conduct and the '17 relevant
11 conduct.

12 The particular AIRE shift in which this defendant
13 conducted his scheme, the A, B and C AIRES, were AIRE shifts
14 that took place across the entirety of the Massachusetts
15 Turnpike. There were generally between two and three and as
16 many as four officers on a given AIRE shift, and there was one
17 lieutenant or sergeant who was officer in charge, in charge of
18 making sure that the officers complied with the rules, that
19 they worked four hours, that they did their jobs.

20 But the reality was Troop E was a troop that spread
21 from Westfield in the furthest western part of the state to
22 Boston, so that lieutenants in Boston would supposedly be
23 supervising troopers doing AIRES in Westfield. And it is clear
24 that in that circumstance there was never going to be any
25 physical interaction between those individuals. There was

1 going to be no check-in at the beginning to make sure someone
2 was working, and there was going to be no check-in at the end
3 to make sure someone had worked until the end of the shift.
4 Communications between these individuals was done by cell
5 phone. They would generally call at the end of a shift with
6 the tickets and numbers.

7 THE COURT: They called?

8 MR. GRADY: They used cell phones. They called the
9 lieutenant --

10 THE COURT: If you use a cell phone, is that a form of
11 wire fraud?

12 MR. GRADY: It would be if the government could point
13 to a particular call made by a particular defendant and say
14 that defendant engaged in a communication that -- it's
15 potential, Your Honor.

16 THE COURT: And I don't know whether, if this was
17 charged as wire fraud, the guidelines would be higher. But
18 anyway.

19 MR. GRADY: But coming back to the issue here, this
20 defendant had no oversight with respect to when he performed
21 his AIRES. As a result, he was able to, on his regular
22 shift -- however the process was, whether he made stops and
23 didn't generate real tickets to the people and simply took
24 their information or he simply ran license plates as people
25 went by -- created false tickets that gave the impression to

1 the State Police when he turned in only that agency copy that
2 he was working when he was not. That was the evidence the
3 government had, and the government had evidence that in 2016,
4 he did it for that year.

5 THE COURT: You had evidence -- you had evidence
6 against seven other members of E Troop, if that's what it's
7 called, that was sufficient to charge them in Federal Court for
8 the same thing.

9 MR. GRADY: Right.

10 THE COURT: For the same time period.

11 MR. GRADY: Yes, but I think this comes back to -- the
12 government had evidence of an individual scheme by these
13 individuals.

14 THE COURT: Six people who work in the same unit
15 committing the same fraud. I mean, if you had charged it as a
16 conspiracy, you'd argue that that's powerful circumstantial
17 evidence that they were working together.

18 MR. GRADY: It's not as small of a unit as perhaps as
19 the court thinks. There are five different barracks spread
20 from Westfield, Charlton, two in downtown Boston with up to 155
21 troopers spread out across that troop. So if eight of those
22 were engaged in individual abuse of the system that does not
23 necessarily suggest that those individuals necessarily
24 conspired, especially where some were in Westfield. This
25 defendant was in Weston. Others were in Boston. The

1 conspiracy is not nearly as clear as the court suggests, and
2 the government had to prove its case beyond a reasonable doubt.
3 It didn't have evidence of this defendant involved in a
4 conspiracy.

5 THE COURT: You told me in January that your
6 investigation was continuing. Is that still true?

7 MR. GRADY: Yes, Your Honor. Both with -- yes.

8 THE COURT: Yes. Okay. And part of the reason I
9 didn't delve further in January is I'm trying to balance two
10 important considerations: One, assuring that I have the
11 information I need to properly calculate the guideline range
12 and sentence, and the other not to have you communicate, at
13 least in public, information that might injure an ongoing
14 investigation.

15 But, I'm sorry, Mr. Bailey, you want to get up.

16 MR. BAILEY: Judge, a few things. It has come out in
17 our sentencing memo, it's come out in other proceedings, that
18 there certainly did exist a ticket quota program within the
19 Massachusetts State Police, something that all of us who have
20 driven here for years have suspected, but it appears to have
21 been verified. I would expect that the evidence is that
22 various troopers tried to meet that quota in their own way. I
23 suspect that some went out and did AIRE plus shifts and did
24 everything in a manner to meet the eight to ten ticket quota
25 that apparently was required of them. I think others figured

1 out their own way not to have to do it that way. And our
2 client has admitted to you under oath that he took criminal
3 shortcuts. He sat through his proffer. Having done
4 racketeering cases, I can tell you that there was no agreement
5 how to do this. There was no teaching how to do this. There
6 was no melding of the minds. And the reference to the folks
7 out on the road, that was referenced in a manner to suggest how
8 it was that superior officers -- how one could know that
9 superior officers may have been out doing this same type of
10 thing because you could hear somebody saying, "Are you okay on
11 that stop," to a superior officer, and that was a routine for
12 all stops, just, are you clear, are you okay?

13 This has always been projected and presented as an
14 individual liability case. That's why we've wound up in
15 different courtrooms.

16 THE COURT: Well, I know it's been presented that way,
17 but your sentencing memo and the essence of the proffer where
18 he gets a call from somebody telling him, We all need to be on
19 the same page, you know, we've agreed we're not going out
20 today, that's a conspiracy.

21 MR. BAILEY: Well, that may be what someone is
22 communicating to him, and that certainly suggests what that
23 individual --

24 THE COURT: Well, he's agreeing to it. Those two
25 people -- ordinarily, you know, when you were a prosecutor or

1 Mr. Grady or Mr. Chao are prosecuting a conspiracy case, you'd
2 say this is good evidence.

3 Look, I'm going to stop on this for now. I don't know
4 that we're going to finish the sentencing today and in part
5 because I think another major matter is the defendant's
6 proffer, but we're not there yet. But I have a question as to
7 whether I am yet to have all the information I need to make an
8 informed decision with regard to section 6B1.2. And I know
9 there's not a formal agreement not to bring a charge, but
10 there's a tacit agreement not to say charge for 2015 and maybe
11 not to charge conspiracy, RICO conspiracy, but I don't know.
12 And I don't know whether the remaining -- I may have a question
13 as to whether the remaining charges adequately reflect the
14 seriousness of the offense, but we'll see where we go.

15 So I've ruled on the objections, and as a result of
16 that, although -- as a result of my ruling, the total offense
17 level is 12, the Criminal History Category is 1, the guidelines
18 are 10 to 16 months in prison, 12 to 36 months supervised
19 release. There's a fine range of \$5,500 to \$55,000,
20 restitution, which is limited to the 2016 count of conviction,
21 is \$14,062.50, and there's a \$100 mandatory special assessment.

22 Do the parties agree those are the guideline ranges
23 based on my ruling on the objections?

24 MR. GRADY: Based on your ruling on the objection,
25 yes, Your Honor.

1 MR. LANZA: Yes, based on that ruling. Thank you.

2 THE COURT: All right. So what then is the
3 government's recommendation and what are the reasons for it,
4 please?

5 MR. GRADY: Your Honor, as set forth in the
6 government's sentencing memorandum, the government's
7 recommendation is for a sentence of six months followed by a
8 one-year of term of supervised release, a fine within the
9 guidelines as calculated by the parties in the plea agreement,
10 \$4,000 to \$40,000, along with the restitution in the amount of
11 \$14,062 and the mandatory special assessment.

12 I won't go long about the facts. The court seems very
13 familiar with them.

14 THE COURT: I may have missed something important.

15 MR. GRADY: Well, of course, and I'll hit the high
16 points for certain. The instant matter, as the court is aware,
17 involved what can only be termed incredibly widespread overtime
18 abuse within what was formerly known as Troop E of the
19 Massachusetts State Police, which was the troop responsible for
20 patrolling the Massachusetts Turnpike.

21 As the court is aware from the Presentence Report and
22 from the parties' filings, an internal Massachusetts State
23 Police audit found that over 40 members of that unit had been
24 paid for overtime hours that they did not work. And eight
25 former troopers, including this defendant, have been charged

1 and convicted or pled guilty in this court of embezzling funds
2 from an agency receiving federal funds.

3 In this case, as the government said, it believes the
4 six-month term of incarceration is appropriate. This is
5 consistent with what the government argued in its plea
6 agreement, and the government -- I would just begin with saying
7 the government re-emphasizes its intent to honor the agreement.
8 It argues within the framework established by that agreement.
9 I know the court knows the --

10 THE COURT: Go ahead. Go ahead.

11 MR. GRADY: And I want to make that record clear so
12 that there can be no question the government continues to honor
13 its agreement.

14 THE COURT: And although I've required that you
15 disclose information that you and the defendant knew you would
16 be required to disclose, at least if the court asked for it, I
17 would say you have been very faithfully discharging your
18 obligations under the plea agreement.

19 MR. GRADY: That's all I need to say on that then,
20 Your Honor. Thank you.

21 This is an issue that has arisen before. There have
22 been two individuals previously sentenced, Your Honor. And I
23 will say very similar things today with respect to what I said
24 with respect to the other individuals.

25 I think the court in imposing a sentence on this

1 defendant has to strike a balance between two very different
2 aspects of what are the very same person. On the one hand,
3 this is a defendant who has served as a law enforcement officer
4 for 30 or more years and at times, as outlined in great detail
5 in the defendant's sentencing memorandum, has done so admirably
6 at personal risk and exemplary at times -- excuse me -- acted
7 at times as an exemplary police officer.

8 Few defendants come before this court with a similar
9 history of public service. It is certainly not common. This
10 defendant has had a stable work history for the last 30 years
11 of his life, and he has had virtually no history with the
12 criminal justice system, except perhaps in enforcing the law.
13 And for such an individual, Your Honor, it's important to note
14 I think from the government's perspective that a number of
15 consequences are going to be inevitable for this individual as
16 a result of this crime regardless of whatever sentence this
17 court chooses to impose and regardless of the length. These
18 charges represent the end of a 30-year career in law
19 enforcement. They likely preclude any future employment in
20 that field at all. Certainly the defendant will be cut off
21 both professionally and personally from the community he's been
22 a part of for the last 30 years. Any pension he earned over
23 that time is certainly in jeopardy, as the court asked us to
24 brief, if not likely forfeit, based on the news reports the
25 government cited to the court.

1 Yet, balanced against this otherwise commendable
2 history, balanced against these inevitable consequences, these
3 already very significant consequences is the inescapable fact
4 that the defendant before the court was a law enforcement
5 officer who chose not to uphold the law but to break it and who
6 chose to use his position and the trust that that position
7 entailed to game the system and to be paid for hours that were
8 never worked and to do so over a very long period of time.

9 To do this, the defendant engaged in a series of
10 coordinated steps outlined in the government's statement of
11 facts to create fraudulent documents on multiple days on
12 multiple occasions throughout the period he was committing this
13 offense, false citations with bogus information, false payroll
14 records, in order to be paid --

15 THE COURT: How are those citations and records
16 submitted to the Massachusetts State Police or whoever?

17 MR. GRADY: Well, I'm happy to digress. So at the
18 time -- and they've since gone to largely electronic
19 formatting. But at the time there were books of citations that
20 were issued in, you know, 20 citations per book, and there were
21 five copies of each citation, so as one wrote on the top, it
22 was then transferred to the four copies underneath. Going from
23 memory, just to -- I don't want to get hung up on this. The
24 copy that went to the person that got the ticket was the top
25 copy.

1 THE COURT: I'm interested in knowing how -- I'm
2 interested in trying to find out whether there was mail fraud
3 or wire fraud involved in the submission in any part of the
4 defendant's scheme.

5 MR. GRADY: The government looked at whether the
6 tickets could form the basis of mail fraud, and what we learned
7 was that the tickets were collected -- the agency copies or
8 even the RMV and court copies that were to go to the court,
9 they were picked up by a trooper who drove them to the Registry
10 or to the courts.

11 THE COURT: All right. I don't know that this makes a
12 difference, but, you know, there were CJIS inquiries made and
13 other things, and I don't know whether the guidelines would be
14 different if this was wire fraud or not embezzlement. But why
15 don't you keep going. This is helpful.

16 MR. GRADY: Sure. He created those tickets in order
17 to be paid for multiple shifts that he didn't work and to hide
18 the crime from discovery by his superiors. In imposing a
19 sentence, the court has to consider --

20 THE COURT: You said to hide the crime from discovery
21 by his superiors?

22 MR. GRADY: Sure. If he hadn't written a ticket,
23 someone would have asked the question about what were you doing
24 for the four hours we're paying you.

25 THE COURT: Unless they were part of the scheme.

1 MR. GRADY: There was no evidence that the government
2 -- well, the government didn't have evidence of a conspiracy
3 with this defendant, Your Honor. And it almost -- well, I
4 don't want to digress too much, Your Honor, but it almost
5 counts against it if he did need to create these fake tickets.
6 It suggests that he needed to justify some paperwork to people
7 that who might have looked, that not every superior would have
8 been in on it. But I don't want to digress too far.

9 Ultimately in imposing a sentence, the court has to
10 consider it is not merely a crime of opportunity here. This is
11 not merely a crime of greed. It is a betrayal of the trust and
12 power placed in the hand of our law enforcement officers. He
13 betrayed the trust placed in him given the inordinate lack of
14 supervision with respect to this. Betrayed the trust that was
15 placed in him given the power he had to enforce the laws and to
16 uphold them. And the court and members of the public can and
17 should expect more, not less, from a law enforcement officer.

18 So in conclusion, the government believes that a
19 sentence, an incarcerated sentence of six months is appropriate
20 followed by a one-year term of supervised release, a fine
21 within the guidelines as calculated by the parties in the plea
22 agreement, along with restitution in the amount of \$14,062.50
23 and the mandatory special assessment represents an appropriate
24 sentence in this case, Your Honor.

25 THE COURT: Well, I think I think you've done a good

1 job of describing the dilemma, but you haven't addressed one
2 thing that I think is very important. As I'm trying to fashion
3 the sentence -- and there is a dilemma, but there's also a fact
4 that's emerged since I took the defendant's guilty plea, and
5 he's made a proffer to the Attorney General's Office. It's
6 reported that you weren't interested in it. He made proffer
7 April 9. It may have come up late. But substantial assistance
8 or even an effort to cooperate that doesn't rise to the level
9 of substantial assistance is a significant consideration, in
10 part because it helps the government, but as I regularly say
11 when I get a 5K motion, the most important part of a
12 cooperation to me is the signal that it sends that this person
13 has got the message and is trying to do something constructive
14 after doing something seriously illegal.

15 Mr. Bailey -- the defendant in his sentencing memo
16 says, invites me to order him to continue to cooperate as a
17 condition of supervised release. You know what information I
18 redacted from the sentencing memo. It seems to me that might
19 be of great interest and value to you, and it could bear in a
20 material way on what the appropriate sentence is. So do you
21 want to address that?

22 MR. GRADY: Sure, Your Honor. The government offered
23 the defendant -- well, can I just have a second? I just want
24 to be certain about what I'm saying publicly.

25 THE COURT: Go ahead.

1 (AUSA Grady and AUSA Chao confer off the record.)

2 MR. GRADY: Just to the extent the issues of
3 cooperation arise, Your Honor, I would ask to briefly address
4 the court at sidebar.

5 THE COURT: You can do that, but take a quick look at
6 the defendant's sentencing memo because I think this may now be
7 public.

8 MR. GRADY: It won't address anything that's public in
9 that memo.

THE COURT: Okay. I'll see you at the sidebar.

11 (Sealed sidebar discussion removed from transcript.)

12 | * * * * *

13 THE COURT: All right. There's one thing that I'll
14 note for the record. It's going to come out -- and maybe,
15 Mr. Grady, you'll address it in this context. It's up to the
16 government whether to file a substantial assistance motion
17 under 5K1.1, but the motion can be filed -- well, upon motion
18 of the government stating the defendant has provided
19 substantial assistance in the investigation and the prosecution
20 of another person who has committed an offense, the court may
21 depart from the guidelines. It doesn't require cooperation
22 with the federal government. It talks about substantial
23 assistance in the investigation and prosecution of others.

24 The case written by Judge Becker, Blessed Memory Love,
25 985 F. 2d 732 at 734, explains why the cooperation doesn't have

1 to be with the federal government, and there are cases
2 prosecuted by your office where I'm sometimes told about
3 cooperation with state authorities as a mitigating factor.

4 In addition, even in the absence of a motion under the
5 current jurisprudence, the fact that the defendant is
6 cooperating is part of his history and characteristics and
7 something that I can consider.

8 So is there anything you'd like to say about how I
9 ought to treat this proffer to the Attorney General's Office in
10 determining what sentence is sufficient and no more than
11 necessary?

12 MR. GRADY: With respect to that, Your Honor, I would
13 say that the court can certainly address it under the 3553(a)
14 factors, and I have no issue with the court doing so.

15 THE COURT: Okay. What unit are you in the U.S.
16 Attorney's Office?

17 MR. GRADY: Public corruption, Your Honor.

18 THE COURT: Who is the head of the public corruption
19 unit now?

20 MR. GRADY: You may be familiar with Fred Wyshak, Your
21 Honor.

22 THE COURT: All right. I'll also note that Rule 35(b)
23 allows the court to reduce a sentence based on a motion of
24 substantial assistance within a year of sentencing, but I don't
25 know that that would be a very effective vehicle in this case.

1 I encountered Mr. Wyshak 22 years ago -- you're smiling -- when
2 he was working closely with the Massachusetts State Police in
3 the investigation of Whitey Bulger, among others.

4 Mr. Bailey.

5 MR. BAILEY: Yes, if it pleases the court. Your
6 Honor, we have requested that this court impose a sentence of
7 one year of probation, six months of that to be served on home
8 confinement. We understand that restitution will be mandatory
9 in the amount of \$14,062.50. In our opinion, that sentence is
10 sufficient but not greater than necessary to achieve the
11 purposes of the Sentencing Reform Act.

12 Your Honor, I do want to briefly circle back to that
13 part we discussed when working on the mathematical calculations
14 themselves and that is the total offense level of 10 that the
15 parties have agreed to. And I want to start out by thanking
16 the government for honoring their agreement with the defendant
17 and also at the same time obviously following this court's
18 instructions and suggestions with regard to what data needed to
19 be placed in front of this court.

20 Yes, there have been memos from Thornburgh to Sessions
21 to all in between about how things should be done and how
22 negotiations should occur and transpire. For the most part,
23 while those are certainly honored and pursued, the way they
24 have been pursued over the years certainly in my experience on
25 both hands is that you eat what you're indicted for. And, you

1 know, we're going to have discussions and negotiations at
2 various stages. But you get indicted for this embezzlement
3 charge, don't come back to us and ask for some sort of
4 reduction or something else because you're going to be stuck
5 with that. And I've not been aware of any change in policies
6 where the parties haven't been free to try to negotiate a
7 particular outcome. And yes, we have Rule 11(c), which is
8 something admittedly that could have been --

9 THE COURT: A binding plea agreement.

10 MR. BAILEY: -- used in this case, and we didn't do
11 that. And I think that was because the defense had always been
12 clear that, while we understood that you'd be recommending six
13 months, we perceive this agreement as a Zone B and we'd be
14 recommending something less. And I think that we consistently
15 told that to the government from the earliest stages.

16 THE COURT: And I don't think the guidelines are
17 intended to discourage plea bargaining. And sometimes charges
18 may be hard to prove, and if you get a conviction without
19 having to take the risk at trial, that's deserving of a
20 concession. And there may be other compelling reasons. But,
21 you know, as I said, in those circumstances, the judge is
22 supposed to be told what the facts are and then we reach this
23 agreement, just what you've done in your sentencing memo. I
24 would say it's sort of a model of what the guidelines
25 contemplate. And then if there's charges that have been

1 foregone -- and that was Mr. Grady's word and I think he used
2 the right one right at the outset -- the judge is supposed to
3 decide whether accepting the plea will serve the purposes of
4 sentencing or be inconsistent with them in a way that causes it
5 to be rejected, but if the judge doesn't know -- if there was a
6 plea agreement that says we're going to indict you for 2016 and
7 not for 2015, you know, then I could have considered that more
8 carefully at the Rule 11 hearing.

9 MR. BAILEY: And again, I will repeat that there was
10 an effort to have in writing we are foregoing 2015, which I
11 initiated.

12 THE COURT: But that's not in the plea agreement, is
13 it?

14 MR. BAILEY: I know. And the response was we can't
15 promise what we don't know, and if we delve into 2015, we will
16 have to reveal that as relevant conduct. And I just think
17 that, as important as it is for this court to make clear what
18 is required about relevant conduct and to make clear that that
19 is -- those are the dictates of the United States sentencing
20 guidelines, I think it's also just very important to still
21 allow some freedom to the parties, for whatever reasons, to
22 come to an agreement as to what the appropriate offense level
23 should be.

24 THE COURT: And I give some weight to the -- the
25 sentence has got to be in a reasonable range. There's not

1 mathematical precision to it. So if this was something that
2 was bargained for, and I have the impression that the
3 government was operating within a reasonable way, I give some
4 weight to the fact that, while the defendant had no assurance,
5 and I asked him at the Rule 11 hearing do you understand nobody
6 can tell you today with certainty what the guideline range is
7 for your sentence or what sentence I will impose, and he said
8 he understood that --

9 MR. BAILEY: You did say that.

10 THE COURT: There's value to plea bargaining, and I
11 understand that point, but it's not the only point.

12 MR. BAILEY: I understand. And we've all been
13 overruled by probation before, too, so that's -- but I just
14 think this was a -- this wasn't sort of a seat-of-the-pants
15 negotiation. This was a negotiation that went back all the way
16 pre-indictment and then continued, and then there was a
17 timeframe about, this is the agreement, agree to it, otherwise,
18 we're going elsewhere with it.

19 THE COURT: All right. I'm not -- I understand that
20 point, and I don't think it's your strongest one. What do you
21 want to address next?

22 MR. BAILEY: Well, Mr. Grady and the government have
23 talked about the offense conduct here and being paid for 140
24 and one-quarter AIRE hours that the evidence established he
25 didn't work and 47 and a quarter X-Team hours as well. My

1 client came into this court, our client, and admitted to you
2 that what he did was wrong, that it was criminal, it was
3 illegal. I think it is relevant to at least look at the
4 context which was this "You got to write eight to ten tickets
5 quota," which was systemic --

6 THE COURT: Well, there's nothing that required that
7 he sign up for overtime, was there?

8 MR. BAILEY: No, but I think in order to place
9 yourself in a position to potentially do it, I think that you
10 would need to be working those particular shifts, and so there
11 was that.

12 THE COURT: That's so you can make additional money.
13 What did he make, like \$63,000 overtime in 2016?

14 MR. BAILEY: I think that's true.

15 THE COURT: On top of about 140 or \$150,000.

16 MR. BAILEY: Yes, and you did ask about the pension.
17 That does not go to the pension calculations at all. And that
18 doesn't mean that Mr. DeJong didn't have a choice not to do
19 this. It doesn't mean that Mr. DeJong didn't know what he was
20 doing was wrong.

21 THE COURT: But actually -- why don't you go on and
22 explain the implications of the ticket quota.

23 MR. BAILEY: The implications are there's just this
24 pressure to go out and get eight to ten tickets because that's
25 the enforcement mandate, and I suppose that's the safe roads

1 initiative; let's just show that we're being aggressive and
2 we're being effective. And there are issues tied to when you
3 can and can't write tickets. It becomes very difficult to
4 write tickets when, if you're -- particularly if you're
5 assigned to the Massachusetts Turnpike where it's
6 bumper-to-bumper and cars are going at 15 to 20 miles per hour
7 and yet you still have this quota, and some individuals found
8 their own ways to meet it illegally and criminally.

9 THE COURT: To meet the quota and to meet the quota
10 without even working the hours.

11 MR. BAILEY: That is correct. And that's why
12 Mr. DeJong sat there on January 28 and said, I did this and
13 what I did was wrong. And that's why he is here ready to be
14 held accountable for it and why he took responsibility for this
15 and why this will eat away for the rest of his life at the
16 career he threw away simply to meet this quota.

17 THE COURT: So are you arguing he did it because there
18 was a ticket quota?

19 MR. BAILEY: I'm arguing that I don't think that you
20 can place this in a greed context or a true malevolence
21 context. I think that you can place this that he committed
22 crimes --

23 THE COURT: In candor, I'm not arguing with you, but,
24 you know, what you've written and what you've said so far has
25 been helpful to me. I don't see how it can be put in anything

1 but a greed context. He's not obligated to work overtime. He
2 could have gone home and been with his loving, lovely family.
3 He wanted more money, and he didn't want to be out on the road
4 getting it, so he wrote phony tickets. And I'm trying to
5 figure out how the man depicted in the letters you gave me
6 decided to do this I would say -- I do say -- year after year.

7 I've counted 2015 as relevant conduct, and it may just
8 be lack of evidence that, you know, that's all he can be
9 punished for in terms of calculating the guidelines and the
10 sentence, you know, those 2015 to the beginning of 2017. But
11 this is -- I'm articulating it so you can address it, and I
12 think I know what the answer is, but I need to hear it and
13 maybe hear it from you but also hear it from Mr. DeJong. How
14 does the man depicted in the Presentence Report with regard to,
15 you know, his history and characteristics and the man uniformly
16 described in the letters start doing this day after day almost
17 and year after year?

18 MR. BAILEY: Mr. DeJong will address this court. This
19 court does have an extensive background in public corruption.
20 And sometimes the reasons are as sort of odd, as I've just
21 suggested, you get caught up in a quota system, you start
22 taking shortcuts, it becomes easy, and you do things
23 counter-intuitively and against the law, and then you come in
24 and you admit that you've done it and you plead guilty.

25 THE COURT: Well, I thought you might say that

1 sometimes it's the culture of the organization and you're
2 working with other people who are doing it and profiting from
3 it. And you've got a choice. You either go to the FBI or some
4 federal agency and say, I'm working with criminals, or you get
5 on the bus and say, I'll go, too; this is a good way to make an
6 extra \$60,000 a year without doing the work.

7 MR. BAILEY: And I think the fact that Mr. DeJong is
8 one of eight so far who have been prosecuted not for the same
9 manner but for the same crime suggests the systemic aspect to
10 it and cultural aspect to it. But I'm also --

11 THE COURT: Because it's right in your sentencing memo
12 on page 9. You're talking -- he's explaining his proffer.
13 "After observing that many of those within the State Police
14 command structure who helped foster the culture in which the
15 misconduct developed had yet to be prosecuted, he agreed to
16 cooperate."

17 MR. BAILEY: Yes, Your Honor.

18 THE COURT: So it's a culture.

19 MR. BAILEY: I'm a little bit on quicksand here
20 because I don't want to be suggesting to this court that
21 Mr. DeJong is excusing or minimizing what he did. I want to
22 make it clear that he is accepting full responsibility here and
23 rely on everything in the sentencing memo. And I think that's
24 why I've used context because I think it's helpful, but I don't
25 want to detract from the fact that Mr. DeJong committed a

1 serious crime and he knows it, and he's ready to make amends
2 for it, which I'll address in further detail.

3 Your Honor, by the same token, I don't think that --
4 while we should not minimize the gravity of the crime, we also
5 shouldn't minimize the history of Mr. DeJong. 57 years old,
6 been married now for 30 years to a loving wife who is here in
7 the courtroom from whom you received a letter, cherished father
8 of two sons who also wrote you letters, had heretofore an
9 unblemished squeaky clean record such that he was eligible to
10 become a police officer in Northbridge and then go to the State
11 Police where he was second in his academy class, where he was
12 number one in fitness, where certainly he was perceived and
13 from time to time used as the poster image of what a
14 Massachusetts state trooper should look like, how he should
15 present, spit and polished by the book.

16 His record outside of that which he has admitted to
17 was not only exemplary but in my opinion for a highway
18 patrolman exemplary and somewhat extraordinary. I've outlined
19 on page 13 to 15 the incident where he nearly lost his leg by
20 hitting a tripwire when going through a marsh to ferret out a
21 marijuana farm and detonated an explosive device, when he dove
22 into a pond in what turned out to be a fatal accident and
23 extracted two out of three passengers out of a submerged car,
24 when his police work in the town of Brimfield led to the
25 discovery of the body of a priest and ultimate conviction for

1 murder at which his testimony was critical, his first response
2 to a brawl involving the Outlaw motorcycle gang, which not only
3 resulted in prosecutions and convictions but ultimately a
4 crackdown on motorcycle gangs in his region, the OUI arrests
5 that he perfected, when a window was broken and when he tried
6 to extract his arm, he got severe lacerations, the high-speed
7 chase in which he -- an armed individual who had been tasered
8 twice kept going and Trooper DeJong effectuated the arrest.
9 The trooper [sic] actually threw a firearm at Trooper DeJong
10 when he was effectuating the arrest, his off-duty fugitive
11 apprehension --

12 THE COURT: Yeah. I've read all of this and any
13 member of the public or media who is sufficiently interested
14 can read it, too, but I don't think you're arguing that that
15 gives him a license to steal.

16 MR. BAILEY: I'm not arguing that it gives him a
17 license to steal.

18 THE COURT: I mean, here is the concern. All of those
19 things are right and they're meaningful, but I don't know how
20 relevant they are. Because one of my concerns is that if I
21 were to give the probationary sentence you're advocating, it
22 would send a signal to other police officers that, you know, if
23 you do your job, then you can also break the law without formal
24 consequence.

25 MR. BAILEY: But it also reinforces the 3553 factors

1 in considerations of the whole picture and the whole
2 presentation.

3 THE COURT: It's relevant and it's part of what, as
4 Mr. Grady I think acknowledged, makes this vexing. And, you
5 know, his personal history apart from his professional history
6 I think is in some respects more important on that issue. But
7 at sentencing the court has to consider the nature of the crime
8 and the history and characteristics of the defendant. The
9 nature of the crime is extremely serious. If you go outside
10 here and look at what's etched on the building, Brandeis'
11 dissent in Olmstead when the government backs a lawbreaker --
12 the government is the omnipotent teacher. When the government
13 breaks the law, it encourages people to believe they can break
14 the law and encourages anarchy. And to give a probationary
15 sentence that you're advocating to a State policeman, absent
16 significant cooperation, might reasonably send a message to
17 people that if you're a private citizen and you embezzle a lot
18 of money, you're going to go to prison, but if you're a
19 policeman and part of the law enforcement establishment, you'll
20 be treated far more favorably. And that's just one of the
21 concerns.

22 MR. BAILEY: And Judge, it's Justice Brandeis' words
23 that caused me to tread with caution about the cultural
24 systemic thing, because again, I don't want to downplay the
25 gravity of the offense here.

1 THE COURT: It doesn't downplay -- no, it wouldn't
2 downplay the gravity of the offense or the fact that what he
3 did was obviously illegal. I'm sure he never had any confusion
4 about that. But as I say, you try to figure out how this
5 happens, and his recent effort to cooperate I think is a
6 significant factor in his history and characteristics.

7 MR. BAILEY: But I do think, Your Honor, that a disk
8 jockey or somebody who wasn't out on the line versus the record
9 of performance is something that the court can take into
10 account.

11 THE COURT: I'll take it into account. But, you know,
12 one way to avoid what you're characterizing as the extreme
13 pressure of having to write tickets when you're working
14 overtime, if you don't want the pressure, don't take the
15 overtime.

16 MR. BAILEY: That's a fair comment and one that I
17 don't think my client would with dispute in any way, Your
18 Honor.

19 So as a result of this, what has Mr. DeJong done to
20 start to make amends and make up for this behavior that's
21 inconsistent with the man in the letters of support and
22 inconsistent with the man that I've just outlined from his
23 bravery and performance of duty? Well, he resigned from a job
24 that he loved and had worked for 26 years. He came into this
25 courtroom and admitted guilt. He did not drag out or draw out

1 the process. The distance between the initial contact between
2 myself and the government through Mr. Grady where we started
3 negotiations and the actual signed plea was under a three-month
4 period, so his acceptance was early. Regardless of how this
5 court perceives the relevant conduct, it did spare substantial
6 effort, substantial expense by the government, which are
7 factors to be taken into consideration.

8 Then he went beyond that, Your Honor, and he put his
9 money where his mouth is. When he was approached by the state
10 Attorney General's Office and asked to come in and proffer, he
11 came in and he proffered. I asked them outright if he was a
12 target of their investigation. They said that he was not a
13 target of their investigation.

14 THE COURT: Here, two things on that. I don't know if
15 in the state vernacular it's the same as it used to be at least
16 in the federal vernacular, there's a difference between a
17 subject and a target.

18 MR. BAILEY: I had that conversation with --

19 THE COURT: A target I think is still defined as
20 somebody as to whom the government has enough admissible
21 evidence to indict, and a subject is somebody who is being
22 investigated.

23 MR. BAILEY: And I vetted that with the State
24 Attorneys General in order to make sure that we were on the
25 same page as that, and the bottom line was there was no

1 pressure for Mr. DeJong to have to come in and cooperate with
2 them because they were not threatening him with a crime, with a
3 charge, which is usually what prompts proffers, certainly in
4 this courthouse and with the United States Attorneys, and I
5 think that's significant and I've explained and won't
6 reiterate --

7 THE COURT: You can reiterate it because I think it's
8 one of the most significant things in this sentencing. In
9 other words, you wrote in your sentencing memo he originally
10 declined an opportunity to cooperate with the U.S. Attorney's
11 Office.

12 MR. BAILEY: And explained why that was. And you're
13 asking me to --

14 THE COURT: No. Well, here, you might reiterate it --
15 unless you don't want to. I mean, it's in writing.

16 MR. BAILEY: It's in writing and it's public, but
17 clearly there were concerns for someone, a son who is still on
18 the job.

19 THE COURT: Concerns that he would be retaliated
20 against, which, if the Massachusetts State Police has a
21 professional culture they would protect against, but he knows
22 the Massachusetts State Police, your client. No, but the point
23 is he declined originally to cooperate with the federal
24 government, but when he was asked about a month ago, less than
25 a month ago, he cooperated with the Attorney General's Office.

1 And I think probably prosecutors have observed that it
2 sometimes takes a while for people to decide to cooperate, to
3 help the government, and they decline initially and they agree
4 eventually. But your argument, if I understand it correctly,
5 is he didn't do it because he was threatened with prosecution.
6 He did it because he wanted to get back on the law enforcement
7 side of the ledger.

8 MR. BAILEY: He wanted to get on the law enforcement
9 side. He wanted to make amends. He had come to grips with his
10 concerns that, you know, I as a father, you as a father,
11 probably would have -- might have had in the same
12 circumstances, and he decided that that was how he starts on
13 the road to expiation for what he did, and the phrase we use is
14 coming to Jesus. People come to Jesus different ways at
15 different times. The fact is it happened, and the fact is it's
16 still right there and he's still willing, and he did it --

17 THE COURT: He's still willing to cooperate with the
18 federal government, too?

19 MR. BAILEY: Yes. And it was done even after I told
20 him that I had had a conversation with the United States
21 government, who had taken a position for reasons stated that
22 they would not be giving him cooperation for purposes of
23 sentencing based on whatever proffer he might give. And we had
24 discussion about that, and he said I still want to do it, and
25 I'm still willing to go ahead and do it. And he did it, and we

1 set forth that, and we appreciated this court's redactions
2 because I think that the reasons are compelling to keep those
3 redactions, and we set that forth in detail at pages 10 to 12.

4 And Mr. DeJong also, as this court knows, was given an
5 opportunity for us to withdraw that from consideration
6 altogether because of this court's very real consideration of
7 the need for transparency, and he still said I now know this is
8 going to come out, I'm committed to this, I'm going to do this,
9 and he did it. And I think that that's very important. And so
10 I think the circumstances of this particular proffer, knowing
11 that the U.S. Attorney's Office would not consider it for 5K
12 purposes, knowing that the state was not forcing him on the
13 threat of a charge, really places in context how remorseful
14 Mr. DeJong is.

15 Your Honor, I think another factor are the sentencing
16 comparisons that we outlined in our case. Trooper Raftery, who
17 had a loss amount, even with the now accepted guidelines range
18 of this court, was \$20,000 -- the accepted loss amounts in this
19 court was \$20,000 greater than our clients, and he was
20 sentenced to a three -month FCI sentence and whatever the
21 supervised release was.

22 THE COURT: Mr. Raftery was charged I think for 2015
23 and 2016.

24 MR. BAILEY: And received three months. Mr. Chin
25 apparently was charged for 2016, received one day deemed

1 served. We did include --

2 THE COURT: I think Mr. Chao was telling me there was
3 much less evidence regarding Mr. Chin.

4 MR. BAILEY: We did include the Boston police sergeant
5 who just last year was charged with overtime fraud in a
6 three-month period in one year. I made a little comment about
7 wondering if relevant conduct factored there because I find it
8 odd that just a three-month period informed those particular
9 charges and whether or not that was a plea negotiation. He
10 received 18 month continuation without finding for a \$13,000
11 fraud loss for overtime. It was established and he admitted
12 that he didn't work.

13 So I think when you place those three sentences within
14 the context of what we're requesting for Mr. DeJong and you
15 factor in the cooperation that we've outlined, the departure in
16 our opinion that we're requesting is supported and is
17 justified.

18 Our client is humbled. He's ashamed. He's
19 remorseful. He's jobless. As everyone is likely aware, he
20 almost certainly is going to lose his pension. There may be
21 splash-back on his son. There's splash-back on him, but he
22 knows what he did is wrong. I think, Your Honor, between that
23 and our -- whatever it was, 17-page memorandum, I think I've
24 addressed all of the 3553(a) factors that we wanted to rely
25 upon in asking for a sentence of one year probation, six months

1 of which will be served in home confinement, a low end fine of
2 \$5,500. He will be paying the restitution.

3 THE COURT: Well, he's not going to be ordered to pay
4 restitution for 2015 because restitution only relates to the
5 count of conviction. So one of the things -- I want to give
6 you a chance to address this -- I'm considering is ordering
7 restitution of that additional at least -- well, not
8 restitution but putting into the fine the amount that he's not
9 being ordered to pay in restitution for 2015.

10 MR. BAILEY: I'll be prepared to address that if that
11 is what this court is --

12 THE COURT: Well, now is the time to address it. I
13 might sentence him shortly.

14 MR. BAILEY: Judge, I think that given that relevant
15 conduct does not factor into restitution and given that there
16 is already a built-in provision of a fine range, which I
17 believe was fixed in this case of between \$5,500 to \$55,000,
18 given that my client is now resorting to part-time work and
19 given what we have mentioned about his wife's health concerns
20 that are an issue now for her --

21 THE COURT: The situation that needs to be monitored
22 every three months?

23 MR. BAILEY: It does. In fact, she has an appointment
24 tomorrow as part of the monitoring. So we would ask for a low
25 end fine range. However, we understand that if this court's

1 sort of balancing of the issues is to impose that loss amount
2 for 2015, we understand, but please do take into account our
3 client's present circumstances of a temporary job and a wife
4 with real health considerations.

5 If this court is to impose a sentence of federal
6 prison time, we would ask -- and I don't believe there's an
7 objection, and I think this is supported by the compliance
8 letter from probation -- that our client receive the standard
9 42-day-ish period for self-reporting to the facility so
10 designated, and again, because of health concerns for his wife,
11 we would ask this court to at least consider a recommendation
12 of designation to FCI Devens.

13 Thank you, Your Honor, for your time. I do know my
14 client would like to address the court.

15 THE COURT: Mr. DeJong, you now have an opportunity
16 but not an obligation to speak before I decide how to proceed.
17 I may sentence you today. It's almost 1:00. I may not. You
18 don't have to say anything if you don't want to, but if there's
19 something you'd like to say for me to consider, now is the
20 time.

21 THE DEFENDANT: Your Honor, I would like to address
22 the court, sir.

23 Your Honor, I want to take this opportunity to
24 apologize for the conduct I engaged in that has brought me
25 before you for sentencing today. My feelings of guilt and

1 shame from the bad decisions I made traumatize and eat away at
2 me every day, especially because I know others have suffered
3 due to my actions.

4 As a law enforcement professional, I not only knew
5 better than to engage in the crime I committed, but also I knew
6 I had sworn to uphold and not break the law. Feeling guilty
7 and accepting responsibility for my behavior is the first step
8 I knew I had to make towards starting to make amends for what I
9 have done. And I know I owe and need to do so much more than
10 simply pleading guilty. I'm ashamed to acknowledge to you and
11 to the public that I lacked the good character to make better
12 decisions.

13 For the rest of my life I'll work hard to reconcile
14 what I did with who I am and those I have wronged and offended.
15 I am embarrassed to admit today I haven't yet figured out how I
16 will make up for all the losses caused by my bad decisions, but
17 I do know this is the time and place to start.

18 I began my career in law enforcement over 30 years
19 ago. From the first time I donned the uniform, I wore it with
20 pride. Like most young police officers, I had an idealistic
21 notion of how the job was to be performed. I wanted to help
22 people and make a difference in their lives. I sincerely
23 believe I did accomplish this for most of my career. I had the
24 best intentions and was liked and respected by my peers and
25 supervisors alike. I know I did some good on and through my

1 job. Sadly, somewhere along the line I lost this vision and
2 got caught up in a culture within a segment of the State Police
3 and as a result, made some very bad decisions. I blame no one
4 else. What I did I did by choice. Because of this I am truly
5 embarrassed and ashamed for my lack of good character.

6 First I would like to specifically apologize to Your
7 Honor and the government for what I have done. Second, I want
8 to apologize not only to the Massachusetts State Police who
9 hired and sustained me for 26 years but also to all of the law
10 enforcement officers whose reputations I may have unfairly
11 tarnished as a result of my wrongful actions and specifically
12 the charge of embezzlement to which I have pled guilty.
13 Because of this I would also like to directly apologize to the
14 majority of men and women in law enforcement who continue to
15 uphold the code of conduct every day as well as to those who
16 believed and trusted in me.

17 I would next like to apologize to my family,
18 specifically my immediate family. My wife, Kristin, who is and
19 has been my best friend and confidant for the last 30 plus
20 years. I would like to apologize to both my sons. A parent
21 could not ask for two better sons, as both have grown into
22 productive, honorable and hardworking young men. Last but most
23 particularly, I would like to apologize to my son Nathan. He's
24 always emulated me and decided to follow in my career path. He
25 proudly graduated from the State Police Academy in January of

1 2018. I have to say this was one of the proudest moments of my
2 life. Being able to pin his badge at the graduating ceremony
3 was a dream come true and one that warrant police officers --
4 few get to experience. Today is especially hard because I
5 looked forward for so long to working side by side with Nathan
6 and sharing my knowledge, experience and law enforcement
7 connection with him. Unfortunately that will never happen now,
8 all because of the bad decisions I've made.

9 In sum, I am simply consumed with guilt and shame.
10 Depression and anxiety are with me daily. I know that the
11 healing process will take a long time, but I look forward to
12 beginning this process to once again being the kind of husband,
13 father, citizen and friend that those who love and who know me
14 will be proud of. I know and understand that admitting my
15 guilt and placing my sentence in the hands of this court is the
16 only way I can begin to do this. Again, I accept full
17 responsibility for my actions and I'm ready to be sentenced.
18 Come what may, I promise to do all in my power to restore the
19 universal confidence and trust I once had but knowingly and
20 sadly eventually took for granted. Thank you, Your Honor.

21 THE COURT: You may be seated. Actually, it's 1:00.
22 We're going to recess and I'm going to continue this sentencing
23 for two reasons. One, I'm not satisfied that I have received
24 the information necessary to correctly calculate the guideline
25 range and to decide whether the government has forgone charging

1 conspiracy in a way that requires me to decide under the
2 guidelines whether the remaining charge adequately reflects the
3 seriousness of the offense and whether sentencing essentially
4 within the guideline range as I tentatively calculated it would
5 undermine the purposes of sentencing statutes and the
6 guidelines.

7 In addition -- and so I'm going to give the government
8 until May 9 to make a submission addressing that concern. And
9 if part of it ought to be under seal, it may file it under
10 seal. But I've seen a lot of conspiracy charges in my last 34
11 years, and I don't know what the evidence is, but I do have a
12 concern that the charge that would have tripled essentially the
13 guideline range as the government calculated it was forgone,
14 and I have to determine whether that's occurred and, if so,
15 whether it was essentially reasonable.

16 But more significantly, Mr. DeJong, what you said and
17 what you've done since April 9 are significant factors in what
18 an appropriate sentence would be. I have to give a sentence
19 that promotes respect for the law. And you're right, you
20 committed a very serious crime, and you brought dishonor on the
21 Massachusetts State Police, which has in its history some
22 people who have done excellent things, as you did excellent
23 things, some excellent things.

24 But Mr. Grady mentioned Mr. Wyshak. I mean, 22 years
25 ago I was hearing about the State Police and the bug they

1 installed at the Lancaster Street garage and a state trooper,
2 if I remember right, named Bob Long who had a leading role in
3 that and how possibly a corrupt Massachusetts State policeman
4 and quite possibly the FBI -- well, actually the FBI
5 participated and tipped Bulger and Flemmi and their colleagues
6 off so they would stop using it. That's part of the
7 Massachusetts State Police history, too.

8 And you're right, what you and your colleagues have
9 done has dishonored that. But there's one thing you said that
10 I disagree with, and you said, you know, your sentencing is the
11 only way you can begin to repair the damage you've done. I
12 don't think so. What you did in making a proffer to the
13 Attorney General a month ago began to repair it. And I've been
14 told that you're willing to continue to do that even if you get
15 sentenced. Is that right.

16 THE DEFENDANT: That's correct, Your Honor.

17 THE COURT: And you're willing to speak to the U.S.
18 Attorney's Office as well?

19 THE DEFENDANT: That's correct.

20 THE COURT: You can sit down. I mean, sentencing, and
21 the sentencing laws recognize this, present dilemmas. A judge
22 has to consider the seriousness of the offense and the history
23 and characteristics of the person. And you committed a very
24 serious offense, and you didn't do it just once. I mean, you
25 did it over years. You had plenty of time to decide to stop

1 doing it. And on the other hand, you've led an otherwise
2 admirable life. And that creates a dilemma to me, the judge
3 who needs to sentence you.

4 But that dilemma can be alleviated I think if I
5 continue this sentencing for a period of time to let you
6 continue to cooperate with the Attorney General. And if it
7 turns out the United States Attorney's Office is interested in
8 knowing what's in the still redacted parts of your sentencing
9 memo, I don't know why they wouldn't be interested, and then
10 see if they make a motion based on your substantial assistance
11 either to the Attorney General or to the federal government or
12 both or what you would say and Mr. Bailey would argue should be
13 the implications of that continuing cooperation. Ordinarily,
14 we don't talk about cooperation publicly, but it is public.
15 It's part of the memo. And I know you prefer that it be
16 secret, but public proceedings are a way that the public holds
17 judges accountable and prosecutors accountable, the government
18 accountable, and it would have been impossible for me to
19 conduct this hearing and consider your cooperation if it wasn't
20 public.

21 So I'm also ordering that the parties give me a status
22 report a week from now as to where they are in their
23 discussions. Given the fact that cooperation has been
24 discussed publicly, you know, if there's a justification, it
25 can be filed under seal or it can be filed under seal

1 temporarily, but it might be made public or a redacted version
2 might be.

3 But it's after 1:00 when we would normally recess, and
4 in its current posture -- as I've said, I'm not sure that I've
5 correctly calculated the guideline range because there may be a
6 good reason why you weren't charged with conspiracy but there
7 may not be, so I want to know about that, and seeing the
8 possibility that the dilemma of determining the appropriate
9 sentence will be alleviated if you're given more time to
10 cooperate. I'll get these reports next week and then decide
11 whether and when to reschedule the sentencing or to continue it
12 for some meaningful period of time, and you can tell me what
13 your respective positions are on that, please.

14 Does anybody want to be heard on that?

15 MR. BAILEY: I think your directive is clear from the
16 defense perspective. There's nothing further for us to say.
17 Thank you, Your Honor.

18 THE COURT: Mr. Grady?

19 MR. GRADY: We'll report on the status report next
20 week, Your Honor.

21 THE COURT: Court is in recess.

22 (Recess taken 1:07 p.m.)

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CERTIFICATE OF OFFICIAL REPORTER

3 I, Kelly Mortellite, Registered Merit Reporter
4 and Certified Realtime Reporter, in and for the United States
5 District Court for the District of Massachusetts, do hereby
6 certify that the foregoing transcript is a true and correct
7 transcript of the stenographically reported proceedings held in
8 the above-entitled matter to the best of my skill and ability.

Dated this 7th day of May, 2019.

11 | /s/ Kelly Mortellite

Kelly Mortellite, RMR, CRR

Official Court Reporter